

**STATEMENT OF
CHAIRMAN STEVEN LATOURETTE
RAILROAD SUBCOMMITTEE
HEARING ON
“IMPACTS OF RAILROAD-OWNED WASTE FACILITIES”
MAY 23, 2006**

Good Morning. I'd like to welcome you all to this morning's hearing on the “Impacts of Railroad-Owned Waste Facilities.”

Under the ICC Termination Act of 1995, the United States Surface Transportation Board has exclusive jurisdiction over railroad facilities, such as freight yards, truck-to-rail intermodal facilities, and auxiliary tracks.

Thus, federal law preempts state and local law regarding establishment and operation of such rail facilities.

However, this preemption only applies where the entity in question is a rail carrier subject to STB jurisdiction. If the entity is not legally a rail carrier, then state and local law applies.

Now when you think of a rail carrier, you probably envision chugging locomotives, rumbling freight trains and tracks stretching beyond the horizon.

But what if a company owns only a few hundred feet of track? Can it still legitimately claim to be a railroad?

And what if that same company is engaged in a potentially noxious business, such as waste disposal? Should the ownership of a short piece of railroad track equate to a complete exemption from state and local oversight?

In my mind, the answer is clearly no.

Congress established federal preemption under the ICC Termination Act to ensure the free flow of interstate commerce, not as a loophole to allow sharp operators to escape legitimate local regulation.

At this morning's hearing, I am going to have some questions for Commissioner Buttrey about how we can ensure that federal preemption applies only to legitimate rail carriers.

I am also looking forward to hearing about the limits of preemption under the ICC Termination Act, and the extent to which state and local laws may still be applicable.

I would like to welcome our other witnesses:

- Mr. William S. Haines Jr., Deputy Director of the Burlington County, New Jersey Board of Chosen Freeholders; and

- Ms. Kathy Chasey, Mayor of Mullica Township, New Jersey.

Thank you for participating in this important Subcommittee hearing.